

PT 99-4

Tax: PROPERTY TAX
Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

| | | | |
|----------------------------------|---|-----------------------|-------------------------|
| CAIRO BAPTIST CHURCH |) | Docket # | 96-2-16 |
| Applicant |) | | |
| |) | | |
| v. |) | | |
| |) | Parcel Index # | 01-01-01-026-003 |
| THE DEPARTMENT OF REVENUE |) | | |
| OF THE STATE OF ILLINOIS |) | | |

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held on June 1, 1998, at 2309 West Main Street, Marion, Illinois, to determine whether or not Alexander County Parcel Index No. 01-01-01-026-003 qualified for exemption from real estate taxation for the 1996 assessment year.

Rev. Larry L. Potts, pastor of the Cairo Baptist Church (hereinafter referred to as the “Applicant”) was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a religious organization; secondly, whether the applicant owned this parcel during the 1996 assessment year; and lastly, whether the applicant used all or part of this parcel for religious purposes during the 1996 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned this parcel during the 1996 assessment year. Finally, it is determined that all of the two-

story building on this parcel qualified for exemption, except 200 square feet of the first floor which was used during part of 1996 as a gift shop and during the remainder of 1996 it was used for storage of gift shop inventory and fixtures.

It is therefore recommended that the building on this parcel be exempt from real estate taxation for the 1996 assessment year, except for 200 square feet of the first floor, which was a former gift shop and a proportionate share of the parcel.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department Of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1996 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On July 29, 1996, the Alexander County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1996 assessment year. (Dept. Ex. No. 2)

3. On September 18, 1997, the Department advised the applicant that it was denying the exemption of this parcel because the applicant had failed to send to the Department the information which it had requested. (Dept. Ex. No. 3)

4. By a letter dated October 9, 1997, Rev. Potts requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on June 1, 1998, was held pursuant to that request.

6. At the pre-trial conference in this matter the Administrative Law Judge advised Rev. Potts that it would be appropriate for the applicant to be represented by legal counsel. Rev. Potts indicated that he wished to proceed without counsel. (Tr. p. 8)

7. The applicant acquired this parcel by a warranty deed dated November 14, 1988. (Dept. Ex. No. 2A)

8. The parcel here in issue is located across from the applicant's sanctuary building on Poplar Street. (Tr. p. 9)

9. During 1996, the applicant held religious services at the sanctuary across the street on Sunday mornings at 9:30 A.M., and 10:30 A.M. and Sunday evenings at 6:30 P.M. Religious services were also held on Wednesday and Thursday evenings at 7:00 P.M. (Tr. p. 9)

10. During 1996, there were approximately 250 members of the applicant. The average attendance on Sunday mornings during 1996, was approximately 160 persons. (Tr. pp. 9 & 10)

11. The parcel here in issue is improved with a two story brick building. During 1996, the first floor contained three large bays. One was used for parking the applicant's bus and two were used for parking applicant's vans. Between two of the bays was a utility area used for storage of tools and props for plays. There also was another utility area where the riding lawn mower was kept as well as banquet tables and more props. At the rear of this last utility area was located a 200 square foot area which was the former gift shop. (Tr. pp.10 & 11, Dept. Ex. No. 4K)

12. During 1996, the second floor of the building on this parcel contained two large areas. The area identified as area 1 was used as a Sunday school room for high school and college age youth. The area identified as area 2 was used as a fellowship area for the youth of applicant. (Tr. p. 14, Dept. Ex. No. 4J)

13. I take Administrative Notice of the Department's decision in Docket No. 88-2-74 in which the Department determined that the applicant was a religious organization. In that case, the Department exempted this parcel and the building thereon, except the 200 square foot area which was used as a gift shop, located on the first floor. (Dept. Ex. No 2D)

14. The applicant allowed a family to use the 200 square foot area as a gift shop. The applicant did not charge the family rent to use that area. The family closed the gift shop in October 1996. The family left the gift shop inventory and fixtures in this 200 square foot area until June 1997. (Tr. pp.11 & 12)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 ILCS 200/15-40 provides as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . not leased or otherwise used with a view to profit, is exempt,

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Based on the Department's decision in Docket No. 88-2-74, I conclude that the applicant is a religious organization. I also conclude that the applicant acquired this parcel on November 14, 1988, and owned it during the entire 1996 assessment year. The applicant, I conclude, used all of this parcel and the two-story building thereon for religious purposes, except the 200 square feet on the first floor. The applicant allowed a family to use the 200 square foot gift shop area to

sell items for their own profit or benefit during the period January 1, 1996, through part of October 1996. During the remaining portion of October through December 31, 1996, the former gift shop area was used by the family that had operated the gift shop to store the remaining inventory and store fixtures. A religious purpose pursuant to the constitution concerning exemption from taxation is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). To qualify for exemption, a property must in fact be used for religious purposes. An exemption will be denied if it is not so used. Thus, for example, a church property that is boarded up and vacant will not qualify for exemption. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). Consequently, said 200 square foot area was not available during any portion of 1996 for use by the applicant for religious or church purposes.

I therefore recommend that Alexander County Parcel No. 01-01-01-026-003 be exempt from real estate taxation for the 1996 assessment year except for 200 square feet of the first floor, which was used as a gift shop, and for non-exempt storage purposes, and a proportionate share of the parcel. I further recommend that said 200 square feet of the first floor and a proportionate share of the parcel should be assessed to the applicant, the owner thereof for the entire 1996 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 12, 1999